IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5467/1997

KESHAV SINGH & ANR. Vs. BOARD OF REVENUE, AJMER & ORS.

DATE: 14.11.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Naveen Dhuan for
Mr. Biri Singh for the petitioners
Mr. Tripurari Sharma for the respondents.

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This writ petition is directed against the order dated 25.05.92 passed by the Collector & District Magistrate, Dholpur, order dated 09.9.94 passed by the Revenue Appellate Authority, Bharatpur, Camp Dholpur and the orders dated 06.02.97 and 18.03.97 passed by the Board of Revenue for Rajasthan, Ajmer in appeal and review petition respectively.

Brief facts of the case are that the petitioners applied for regularisation of the land bearing Khasra No. 543 measuring 50 Bigha and new Khasra No. 507 measuring 41 Bigha 6 Biswa situated in village Ekta, Tehsil Basedi, District Dholpur. As per the report, the petitioners were found in possession of 7 Bighas land each in the above Khasra.

It is also not disputed that the land which is in possession of the petitioners was pasture land and nature of posture land was converted by the Sub Divisional Officer and the case of the petitioners was considered for regularisation and on account of possession over the land in question, the possession was regularised on 31.12.1974 and mutation was also opened in the petitioners name.

An application was moved on behalf of the respondent No.2 Ram Bharosi under Rule 14(4) of the Allotment of land (For Agriculture Purposes) Rules, 1970 (for short 'the Rules of 1970') alleging therein that the petitioners got the land allotted in their favour and also able to got the regularisation of the possession and mutation were opened by way of manipulation and misrepresentation.

It was also alleged that the petitioners were never in possession of the land in question. The Collector & District Magistrate, Dholpur in its order dated 25.05.92 examined as many as 11 points to settle the dispute, which are as under:-

> “1. केशव सिंह व रामप्रकाश दोनों नत्थीसिंह के पुत्र हैं और ग्राम गुनपुर के रहने वाले हैं तथा करीब 6 माह पूर्व ही ग्राम एक्टा में अपने साले रामस्वरूप के यहां आकर बस गये हैं जो वर्ष 1974 में आवंटन के पूर्व या आंवटन के बाद ग्राम एक्टा में नहीं रहे।

2. दोनों गैर सायलान का आराजी खसरा नं. 507 पर कभी कोई कब्जा नहीं रहा।

3. ये भूमि चारागाह की भूमि है।

4. गैर सायलान के हक में किया गया नियमन/आंवटन दिनांक 31-12-74 का है मगर यह आंवटन किसी तहसीलदार या उपजिलाधीश ने नहीं किया और न उनको ऐसा करने का अधिकार था। नियमन/आवंटन सम्बन्धी कार्यवाही में यह भी अंकित नहीं किया गया कि गैर सायलान का कब्जा किस सम्वत से था।

5. उपजिला मजिस्ट्रेट, धौलपुर या उपखण्डाधिकारी धौलपुर को चारागाह की भूमि को परिवर्तित करने और आवंटन/नियमित करने का कोई अधिकार प्राप्त नहीं था एवं आवंटन बिना आवंटन सलाहकार समिति की राय के किया गया है इसलिये नियम-13 के विरूद्व है।

6. गैर सायलान नियमन/आवंटन के दिन भूमिहीन नहीं थे और वे अपने पिता के साथ संयुक्त परिवार में ग्राम गुनपुर में रहते थे गैर सायलान एक्टा ग्राम के अथवा तहसील बसेडी के अन्य नजदीक के गांव के रहने वाले नहीं थे इसलिये नियम-10 (2) की पालना नहीं हुई।

7. दिनांक 31-12-74 को सम्बन्धित नियमों के अधीन इस भूमि पर नाजायज कब्जे को नियमित करने का कोई कानुन नहीं था1

8. आराजी खसरा नं. 507 के सम्बन्ध में सायल व अन्य व्यक्ति महेन्द्र, जगमोहन वगैहरा के बीच एक राजस्व वाद नम्बरी 434/70 एवं दूसरा वाद महेन्द्र सिंह बनाम राजस्थान सरकार न्यायालय सहायक कलेक्टर धौलपुर में 11-11-70 को पेश हुआ था जो 22-5-74 को वादीगण के हक में डिक्री हुआ और वे खातेदार काश्तकार घोषित किये गये मगर इस डिक्री का रेकार्ड में अंकन नहीं हो पाया था। इस भूमि की बाबत अदालत सहायक कलेक्टर बाडी में दिनांक 5-5-90 को एक राजस्व वाद नम्बर 43/90 प्रस्तुत किया था।

9. सन् 1989 में एवं 1990 में राजकुमार पुत्र अमरसिंह पुत्र रामभरोसी तथा कुछ अन्य लोगों के खिलाफ मौके पर इस भूमि पर कब्जे होने के कारण उनके विरूद्व धारा-91 राजस्थान भू-राजस्व अधिनियम कार्यवाही की गई थी।

10. गैर सायलान के हक में यदि नियमन/आवंटन की बाबत राजस्व रेकार्ड में आज तक कोई अंकन नहीं हुआ है।

11. दिनांक 11-7-91 को जब तहसीलदार बसेड़ी मौके पर पैमाईश करने गये और पूछताछ की तो सायल को पहली बार इस भूमि का गैर सायलान के हक में आवंटन/नियमन होने का पता चला और तत्पश्चात् उसमें रेकार्ड की जांच की एवं 17-7-91 को नकल प्राप्त करने के बाद समस्त जानकारी प्राप्त हुई तत्पश्चात् ये प्रार्थना-पत्र पेश किया गया।"

Having considered each and every aspect with regard to the issues framed by the Collector, the application moved on behalf of the respondent No.2 Ram Bharosi under Section 17(A) was allowed and the Collector & District Magistrate, Dholpur while allowing the application, cancelled the order dated 18.06.91 and the regularisation/allotment order was also cancelled and the concerned Tehsildar was directed to refund the amount which was deposited by the petitioners.

Aggrieved and dissatisfied with the aforesaid order of the Collector & District Magistrate, Dholpur dated 25.05.92, the petitioners preferred an appeal before the Revenue Appellate Authority, Bharatpur, Camp Dholpur. The Revenue Appellate Authority having thoroughly examined the application moved on behalf of the respondent No.2 and having considered the order passed by the Collector & District Magistrate, Dholpur in the application moved on behalf of the respondent No.2 following irregularities were pointed out:-

“1. यह कि गैर सायलान ग्राम गुनपुर तहसील राजाखेडा के निवासी हैं और बरवक्त आंवटन ग्राम एक्टा

तहसील बसेडी में निवास नहीं करते थे।

2. यह कि आवंटन आराजी पर उनका कब्जा कभी नहीं रहा।

3. यह कि आराजी चारागाह है।

4. यह कि गैर सायलान के हक में किया गया आवंटन नियमन फर्जी है क्योंकि नियमन से पूर्व आराजी पर उनका कब्जा नहीं था।

5. उप जिला कलेक्टर धौलपुर को चारागाह आराजी की किस्म परिवर्तन का अधिकार नहीं था।

6. यह कि बरवक्त नियमन वे भूमिहीन नहीं थे।

7. यह कि नियमन की दिनांक 31.12.74 को नाजायज कब्जे के नियमन का कोई कानून नहीं था।

8. यह कि इस आराजी के सम्बन्ध में प्रार्थी व अन्य के मध्य दावा चलकर दिनांक 22.5.74 को सायलान के पक्ष में दावा डिक्री हुआ था लेकिन डिक्री की इजराय की अवधि निकलने के बाद पुन: एक दावा जेरकार है।

9. यह कि सन् 1989 एवं 1990 में इस भूमि पर राजकुमार व अन्य लोगों का अतिक्रमण था जिसके कारण उनके विरूद्व धारा 91 भू राजस्व अधिनियम के अन्तर्गत कार्यवाही की गई थी।

10. यह कि गैर सायलान के हक में नियमन का अमल आज तक नहीं हुआ है।"

Upon consideration of the rival submissions of the respective parties and the judgments as well as the provisions of law, the Revenue Appellate Authority upheld the order dated 25.05.92 passed by the Collector & District Magistrate, Dholpur and rejected the appeal filed by the petitioners vide its judgment dated 09.09.94.

Both the above orders dated 25.05.92 and 09.09.94 passed by the Collector & District Magistrate, Dholpur and the Revenue Appellate Authority respectively, were assailed by the petitioners before the Board of Revenue, Ajmer by way of filing appeal.

The Board of Revenue has considered the submissions advanced on behalf of the petitioners that under the Allotment Rules, 1970, allotment was made and the amount was deposited and as such allotment could not be cancelled. Learned counsel for the petitioners referred Rule 20 and also pointed out that proceedings are initiated after a lapse of 20 years and the allotment order has been cancelled merely on technical grounds.

It is also contended that Rule 20(2) of the Rajasthan Colonisation Medium & Minor Irrigation Project) Rules, 1968 (for short 'the Rules of 1968) has not been properly considered. As per Rule 20, there is no bar that the petitioners being not residents of the same village, are not entitled to get the allotment in their favour.

On behalf of the State, the learned Govt. Advocate has referred Rules 10, 13, 17 and 21 and submitted the judgments relied upon by him.

The Board of Revenue having considered each and every aspect and the submissions advanced on behalf of the respective parties and upon perusal of the judgments relied upon and having considered the observations made by the Collector & District Magistrate, Dholpur vide its judgment dated 25.05.92, who has observed that in the matter of allotment for the first time Keshav Singh (petitioner No.1 here in this writ petition) moved an application on 06.10.90 for regularising the allotment made in the year 1974. Keshav Singh has further in the affidavit misrepresented the facts regarding his age and other particulars and he does not belong to village Ekta.

The report made by the Tehsildar dated 31.12.74, there is an order of Sub Divisional Officer, Dholpur i.e. without any date and in fact there was no such post existed in the year 1974-75.

It was also observed by the Court below that entire record appears to be a fabricated one and on the basis of the relevant record the allotment so made and further proceedings thereof require to be cancelled on this count alone.

It is not disputed that the alleged allotment order was passed in the year 1974 and till 1991, no

amount was deposited and when the matter was enquired, it was found that every thing has been manipulated and fabricated.

The Board of Revenue vide its judgment dated 06.02.97, dismissed the appeal filed on behalf of the petitioners and upheld the orders dated 25.05.92 and 09.09.94 passed by the Collector & District Magistrate, Dholpur and the Revenue Appellate Authority, Bharatpur, Camp Dholpur respectively.

Against the order dated 06.02.97, the petitioners preferred a review petition before the Board of Revenue, wherein the Board of Revenue has further thoroughly considered the submissions advanced on law and facts and observed that the appeal was rejected by the Board of Revenue upholding the orders passed by the Collector & District Magistrate and the Revenue Appellate Authority vide judgment dated 06.02.97 for various reasons, firstly because the allotment of the land was made in contravention of the rules; secondly the appellant was not the resident of the place where the land was allotted to him; thirdly the conditions of the allotment were also violated and fourthly, the so called allotment was made in the year 1974 under the Rules of 1970 and till 1991 no amount

was deposited.

It was also observed that when the enquiry was made, it was found that the order of regularisation was obtained by fraud and manipulation and fabrication in record. Thus, having considered the ratio decided by the various High Court as well as the Hon'ble Supreme Court, the Board of Revenue dismissed the review petition summarily without interfering in the orders passed by the Courts below.

Upon careful perusal of the concurrent findings given by the Collector & District Magistrate, Dholpur, the Revenue Appellate Authority, Bharatpur, Camp Dholpur and the Board of Revenue in appeal and review petition, as observed herein above, allotment which was procured, is no doubt by connivance with the authorities and fabricating and manipulating the record and the petitioners are not able to prove their adverse possession over the land as per rules for which they are entitled to seek regularisation/ allotment of the land in question.

Further, this Court is fully satisfied with the reasons and observations made by the Collector & District Magistrate, Dholpur, the Revenue Appellate Authority, Bharatpur, Camp Dholpur and the Board of

Revenue, Ajmer that the allotment of land was made in contravention of the rules and appears to be manipulated one.

In such circumstances, this Court do not want to interfere with the concurrent findings given by all the Courts below.

Consequently, the writ petition fails being devoid of merit and the same is accordingly dismissed.

The ex parte interim order dated 22.10.97 granted by this Court stands rejected. The stay application also stands dismissed.

(K.S. RATHORE),J.

/KKC/